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Application Number

10/708,033

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February 4, 2004

First Named Inventor

Jed Rose

Art Unit

3711

Examiner Name

Benjamin H. Layno

Attorney Docket Number

014622-000001

**ENCLOSURES (check all that apply)**☐ Fee Transmittal Form☐ Fee Attached☐ Amendment / Reply☐ After Final☐ Affidavits/declaration(s)☐ Extension of Time Request☐ Express Abandonment Request☐ Information Disclosure Statement☐ Certified Copy of Priority Documents☐ Response to Missing Parts/  
Incomplete Application☐ Response to Missing Parts  
under 37 CFR 1.52 or 1.53☐ Drawing(s)☐ Licensing-related Papers☐ Petition☐ Petition to Convert to a  
Provisional Application☐ Power of Attorney, Revocation  
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of Appeals and Interferences☒ Appeal Communication to Group  
(*Appeal Notice, Brief, Reply Brief*)☐ Proprietary Information☐ Status Letter☒ Other Enclosure(s) (please identify  
below):**Appendix of Claims on Appeal; and  
Acknowledgement Postcard**

Remarks

**SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT**

Firm Name

MOORE &amp; VAN ALLEN

Signature

Printed Name

JENNIFER L. SKORD

Date

November 14, 2005

Reg. No.

30,687

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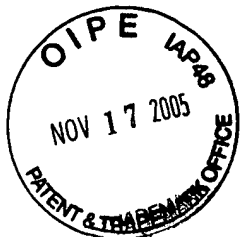
Katrina Holland

Date

November 14, 2005

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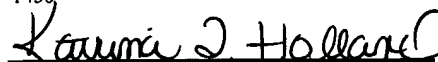
Appln. No. : 10/708,033  
Applicants : Jed E. Rose, et al.  
Filed : February 4, 2004  
Art Unit : 3711  
Examiner: : Benjamin H. Layno  
Docket No. : 014622.000001  
Customer No. : 24239  
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Katrina T. Holland

**AMENDED APPEAL BRIEF -- to be in compliance with 37 CFR 41.37 (c)(1)(v)**

Sir:

This is responsive to the October 20, 2005 Notice of Non-Compliant Appeal Brief for the Appeal Brief received August 11, 2005 at the US PTO. The October 20, 2005 Notice sets a due date of

**November 20, 2005**

for filing a compliant, amended Appeal Brief. The Appeal was from the second Office Action dated March 16, 2005. A Notice of Appeal was filed June 16, 2005, which set a 2-month term of August 16, 2005 for filing the Appeal Brief. The Appeal Brief included an attachment of an Appendix (of claims 1 – 27 on Appeal), which is again attached here.

The October 20, 2005 Notice indicated that in the SUMMARY OF INVENTION section of the Appeal Brief, the subject matter defined in each independent claim is referred to in the specification by paragraph number and Figure number, and instead, should refer to page and line number, and to the drawings by reference characters. *In connection therewith, it is noted that the drawings do not have references characters.*

The instant Appeal Brief is now in compliance, as the SUMMARY OF INVENTION section has been appropriately amended below, and the rest of the Appeal Brief below remains the same (except that the DEPOSIT ACCOUNT section notes the Appeal Brief fee was already paid).



## **REAL PARTY IN INTEREST**

The inventors are the real party in interest, and thus, the inventors are the appellants. The inventors are Jed E. Rose, Frederique M. Behm, Justin P. Rose, Andrew M. Rose, and Anthony E. Rose. The subject application no. 10/708,033 is not assigned.

## **RELATED APPLICATIONS**

There are no other Appeals or Interferences known to appellants or to appellants' legal representative which will directly affect or be directly affected by or have a bearing on the Board's decision in the present pending Appeal.

## **STATUS OF CLAIMS**

Claims 1 – 27 stand rejected.

Claims 1 – 27 are being appealed.

## **STATUS OF AMENDMENTS AFTER SECOND OFFICE ACTION**

No amendments were filed after the second office action.

## SUMMARY OF INVENTION

The present invention, as defined in independent claim 1, is directed to playing cards. The cards comprise a deck divided into a first suit and a second suit. Each of the first and second suits respectively comprises certain specific kinds of cards. More particularly:

- (1) the first suit comprises threat cards, and
- (2) the second suit comprises tool cards.

Support for claim 1 is at lines 5 – 8 of page 2 (paragraph 0004) in the SUMMARY OF INVENTION section of the subject patent application and the discussion of Figures 1 – 23 from line 10 of page 3 - line 2 of page 6 of the DETAILED DESCRIPTION section of the subject patent application, as illustrated by Figures 1 – 23 *per se*.

The present invention, as defined in independent claim 11, is directed to playing cards. The cards comprise a deck divided into a first suit and a second suit. Each of the first and second suits respectively comprises certain specific kinds of cards. More particularly:

- (1) the first suit comprises threat cards, and
- (2) the second suit comprises tool cards, and has
  - (a) at least one tool card containing on its face a legend reading “WILD”,  
and
  - (b) the same number of cards as the first suit has or  
twice the number of cards as the first suit has.

Support for claim 11 is at lines 5 – 8 of page 2 (paragraph 0004) in the SUMMARY OF INVENTION section, line 15 of page 6 - line 2 of page 7 (paragraph 0037) of the DETAILED DESCRIPTION section of the subject patent application, lines 8 – 12 of page 11 (paragraph 0055) of the DETAILED DESCRIPTION section of the subject patent application, and the discussion of Figures 1 – 23 from line 10 of page 3 - line 2 of page 6 of the DETAILED DESCRIPTION section of the subject patent application, as illustrated by Figures 1 – 23 *per se*.

The present invention, as defined in independent claim 12, is directed to a method of playing a card game. The method comprises providing playing cards. The cards comprise a deck having a first suit and a second suit, wherein the first suit comprises threat cards, and the second suit comprises tool cards, and wherein the first suit and the second suit are separated from each other into a first group and a second group. The method additionally comprises a first player selecting a threat card from the first group and a tool card from the second group, and telling a story based on the selected hand of cards, and scoring from zero points to a selected number of points for the story. The method additionally comprises continuing play with at least one other player additional to the first player; and continuing with play among players until all cards have been selected from the two groups or until an agreed upon time has been reached.

Support for claim 12 is at lines 9 – 22 of page 2 (paragraph 0005) in the SUMMARY OF INVENTION section of the subject patent application and the discussion of Figures 1 – 23 from line 10 of page 3 - line 2 of page 6 of the DETAILED DESCRIPTION section of the subject patent application, as illustrated by Figures 1 – 23 *per se*.

The present invention, as defined in independent claim 27, is directed to a method of playing a card game. The method comprises providing playing cards. The cards comprise a deck having a first suit and a second suit, wherein the first suit comprises threat cards, and the second suit comprises tool cards, and wherein the first suit and the second suit are separated from each other into a first group and a second group. The method additionally comprises a first player selecting a threat card from the first group and a tool card from the second group, and telling a story based on the selected hand of cards. The method additionally comprises another player or players having a chance to tell another story based on the same selected hand of cards. The method

additionally comprises the player with the best of the stories scoring from zero points to a selected number of points for the story told. The method additionally comprises continuing play by another player selecting cards and by storytelling and point scoring, and continuing with play among players until all cards have been selected from the two groups or until an agreed upon time has been reached.

Support for claim 27 is at lines 9 – 22 of page 2 (paragraph 0005) in the SUMMARY OF INVENTION section, lines 9 – 22 of page 8 (paragraph 0044) of the DETAILED DESCRIPTION section of the subject patent application, lines 23 - 27 of page 8 (paragraph 0045) of the DETAILED DESCRIPTION section of the subject patent application, and the discussion of Figures 1 – 23 from line 10 of page 3 - line 2 of page 6 of the DETAILED DESCRIPTION section of the subject patent application, as illustrated by Figures 1 – 23 *per se*.

## ISSUES

Claims 1 – 11 stand rejected under 35 USC §102(b) as being anticipated by U.S. Patent No. 5,417,432 to Dwyer.

Claims 1 – 11 stand rejected under 35 USC §101 as being directed to the mere arrangement of printed matter on playing cards -- a mere arrangement of printed matter not being within the statutory classes.

Claims 12 – 27 stand rejected under 35 USC §103(a) as being unpatentable over U.S. Patent No. 5,547,199 to Calhoun, in view of U.S. Patent No. 4,637,799 to Bouchal.

## ARGUMENT

### *I. Discussion of rejection of claims 1 - 10 under 35 USC §102(b) as being anticipated by U.S. Patent No. 5,417,432 to Dwyer.*

In both the first Office Action and the second Office Action, the Examiner made the same anticipation rejection under 35 USC §102(b) in view of Dwyer.

Appellants once again respectfully point out, as the Examiner should be aware, for a reference to be a reference under any paragraph of §102, that reference, *by itself*, must teach each and every element of the claimed invention. As appellants already explained in their December 20, 2004 Response to the first Office Action, that is not achieved by Dwyer by itself.

With respect to the arguments in the December 20, 2004 Response, the Examiner now takes the position in the second Office Action that:

Applicant's [*sic*, Applicants'] arguments are based on how the printed matter on the two suits is used to play a game. This relates to game rules or method of play.

Appellants respectfully point out that this statement by the Examiner is clearly erroneous and that the December 20, 2004 arguments vis-à-vis claims 1 – 10 specifically relate to the *product playing cards themselves, not the method of playing the game*.

Appellants respectfully summarize the following, as discussed in their December 20, 2004 Response to the first Office Action.

Appellants' independent product claim 1, and thus due to incorporation by reference, all of the dependent claims that depend back to independent claim 1, require that the playing cards comprise two DISTINCT suits where the first suit comprises threat cards and the second suit comprises tool cards.

The Examiner is correct in his comment in the first Office Action that Dwyer discloses playing cards having a first suit of 26 cards each with a letter of the alphabet "A" to "Z" and a picture, and a second suit of 26 cards each with a letter of the alphabet "A" to "Z" and a picture, but varying in color of border design.

In other words for Dwyer, the letter/picture of each of the 26 cards in the first suit is the same letter/picture of each of the 26 cards in the second suit. Thus, the two suits are the SAME, with the ONLY difference between the two suits being the color of the border design.

Also in the first Office Action, in connection with the Examiner's rejection of the claims under 35 USC §102(b) as being anticipated by Dwyer, the Examiner noted that there are differences between the present invention and Dwyer, and those differences reside in the meaning and information conveyed by the printed matter. Thus, the Examiner, *by his own admission*, acknowledged that there are differences between appellants' playing cards and Dwyer's playing cards. Then, the Examiner cited *Ex parte Breslow*, 192 USPQ 431 (Board of Appeals, 1975), for the proposition that differences that reside in the meaning and information conveyed by printed matter on the cards are considered unpatentable differences.

Now in the second Office Action, the Examiner asserted that since the presently claimed playing cards are not novel in view of Dwyer that therefore *Ex parte Breslow* applies, and thus, the present product claims are not patentable, and again the Examiner cited *Ex parte Breslow*.

Appellants again respectfully submit that the Examiner has misinterpreted *Ex parte Breslow*.

Rather, *Ex parte Breslow* involved a claimed combination card game/board game, where the prior art Mitchell patent also involved a combination card game/board game.

The Breslow claimed game had a board divided into stations indicative of jobs requiring certain qualifications and pay certain salaries, and cards divided into job experience cards, job availability cards, and salary cards. A chance device was operated to determine the number of stations that a player moved the playing piece and the station landed on determined from which set of cards the player must draw. Information on the cards was utilized to follow the game rules. The directions printed on the card drawn determined what the player must do for the game to progress.

The prior art Mitchell game had a board, a chance device and sets of cards. The board was divided into stations and the chance device determined the station to which a player's playing piece was advanced. The station landed on (by color code) determined from which deck of cards the player would draw. The instructions on the card determined what the player must do for the game to progress.



Thus, the Board in *Ex parte Breslow* held that:

the relationship between the game board and cards of Mitchell is identical to that of appellant's game board and card and ... the printed matter on the game board and cards of appellant's game is insufficient to define any new functional relationship over that shown by Mitchell.... There is as much correlation between the sets or deck of cards and the stations of Mitchell as there are in appellant's board game. ... Any differences relate to the information or instructions conveyed by the printed matter and not in any structure per se.

In short, the function between the cards and the board in the Mitchell game was the same as the function between the cards and the board in the Breslow claimed game.

In contrast, appellants' playing cards have significant structural differences in that the cards have *two different suits*, where the first suit has the structure of threat cards and the second suit has the structure of tool cards. In contrast in Dwyer, there are two suits, but the cards of the first suit are the same as the cards of the second suit, with only a minor variance in border color. Thus, the function between applicants' first suit and second suit is different from the function between Dwyer's first suit and second suit.

If appellants' two suits were the same cards, then appellants' function between the two suits would not exist, since both suits would have the same cards, instead of the first suit having threat cards and the second suit having tool cards. On the other hand, having the two suits be the same cards is the function of Dwyer, namely to teach children the alphabet by the children matching two cards with letter "A", two cards with letter "B", and so on.

Based on the Examiner's misinterpretation of *Ex parte Breslow*, the Dwyer playing cards would not be patentable either, since there are certainly older games with playing cards, and the first such playing cards would anticipate all later developed playing cards.

Hence, Dwyer cannot be a reference under §102(b) against claim 1 since Dwyer is not a reference that *by itself* teaches each and every element of the presently claimed invention as claimed in claim 1. Accordingly, the Board is respectfully requested to instruct the Examiner to withdraw the rejection under §102(b) for anticipation of claim 1 with regard to U.S. Patent No. 5,417,431 to Dwyer.

For the following additional reasons, each of dependent claims 2 – 10, each of which

depends back to independent claim 1, further distinguishes with respect to novelty over Dwyer.

As compared to independent claim 1,

**dependent claim 2** further requires that the second suit has the same number of cards as the first suit has or the second suit has twice the number of cards as the first suit has;

**dependent claim 3** further requires that the first suit has 26 threat cards and the second suit has 26 tool cards or 52 tool cards;

**dependent claim 4** further requires that the first suit has at least one threat card chosen from a card containing on its face a legend reading “DEADLY INFECTION”, a card containing on its face a legend reading “ANACONDA”, a card containing on its face a legend reading “TRAPPED IN AN ELEVATOR”, a card containing on its face a legend reading “A POOL OF QUICKSAND”, a card containing on its face a legend reading “CHARGING RHINO”, a card containing on its face a legend reading “MAD AND HUNGRY OCTOPUS”, a card containing on its face a legend reading “HUNGRY CROCODILE”, a card containing on its face a legend reading “A FLOOD”, or a card containing on its face a legend reading “HIT BY LIGHTNING”;

**dependent claim 5** further requires that the first suit has at least one threat card chosen from a card containing on its face a legend reading “DEADLY INFECTION” and a picture of a person having an infected arm, a card containing on its face a legend reading “ANACONDA” and a picture of a snake, a card containing on its face a legend reading “TRAPPED IN AN ELEVATOR” and a picture of an elevator with a person trapped inside, a card containing on its face a

legend reading “A POOL OF QUICKSAND” and a picture of a person with the person’s lower half inside of a pool of quicksand, a card containing on its face a legend reading “CHARGING RHINO” and a picture of a rhinoceros, a card containing on its face a legend reading “MAD AND HUNGRY OCTOPUS” and a picture of an octopus, a card containing on its face a legend reading “HUNGRY CROCODILE” and a picture of a crocodile, a card containing on its face a legend reading “A FLOOD” and a picture of flood water approaching a house, or a card containing on its face a legend reading “HIT BY LIGHTNING” and a picture of a rain storm with a lightning bolt striking a person standing on the ground;

**dependent claim 6** further requires that the second suit has at least one tool card chosen from a card containing on its face a legend reading “A PARACHUTE”, a card containing on its face a legend reading “A WELDING TOOL”, a card containing on its face a legend reading “A HOSE”, a card containing on its face a legend reading “A LIFE VEST”, a card containing on its face a legend reading “A MIRROR”, a card containing on its face a legend reading “A GUN”, a card containing on its face a legend reading “A NEEDLE AND THREAD”, a card containing on its face a legend reading “A CELL PHONE”, a card containing on its face a legend reading “A MAGNIFYING GLASS”, a card containing on its face a legend reading “A ROPE”, a card containing on its face a legend reading “A POT OF HONEY”, a card containing on its face a legend reading “A FIRE EXTINGUISHER”, or a card containing on its face a legend reading “A HAM SANDWICH”;

**dependent claim 7** further requires that the second suit has at least one tool card

chosen from a card containing on its face a legend reading “A PARACHUTE” and a picture of a parachute, a card containing on its face a legend reading “A WELDING TOOL” and a picture of a welding tool, a card containing on its face a legend reading “A HOSE” and a picture of a hose, a card containing on its face a legend reading “A LIFE VEST” and a picture of a life vest, a card containing on its face a legend reading “A MIRROR” and a picture of a mirror, a card containing on its face a legend reading “A GUN” and a picture of a gun, a card containing on its face a legend reading “A NEEDLE AND THREAD” and a picture of a needle and a spool of thread, a card containing on its face a legend reading “A CELL PHONE” and a picture of a cell phone, a card containing on its face a legend reading “A MAGNIFYING GLASS” and a picture of a magnifying glass, a card containing on its face a legend reading “A ROPE” and a picture of a rope, a card containing on its face a legend reading “A POT OF HONEY” and a picture of a pot of honey, a card containing on its face a legend reading “A FIRE EXTINGUISHER” and a picture of a fire extinguisher, or a card containing on its face a legend reading “A HAM SANDWICH” and a picture of a ham sandwich;

**dependent claim 8** further requires that the second suit has at least one tool card containing on its face a legend reading “WILD”;

**dependent claim 9** further requires that the second suit has at least one tool card containing on its face a legend reading “WILD” and a picture of a joker’s head;

and

**dependent claim 10** further requires that the deck of cards is in combination with a time keeper.

None of these further features from dependent claims 2 – 10 is in Dwyer.

Hence, Dwyer cannot be a reference under §102(b) against any of claims 2 – 10 since Dwyer is not a reference that *by itself* teaches each and every element of the presently claimed invention as claimed in any of claims 2 - 10. Accordingly, the Board is respectfully requested to instruct the Examiner to withdraw the rejection under §102(b) for anticipation of claims 2 – 10 with regard to U.S. Patent No. 5,417,431 to Dwyer.

***II. Discussion of rejection of claims 1 - 10 under 35 USC §101 as being non-statutory subject matter.***

In the second Office Action, the Examiner made a new rejection that claims 1 – 10 are non-statutory subject matter under 35 USC §101 as being a mere arrangement of printed matter. The Examiner stated that the playing cards as claimed are a mere arrangement of printed matter that is not functionally related to the substrate and therefore do not distinguish from the prior art. The Examiner cited three very old court cases from 1969, 1955, and 1967, namely:

*In re Miller*, 164 USPQ 46 (CCPA 1969),

*Ex parte Gwinn*, 112 USPQ 439 (Bd. App. 1955), and

*In re Jones*, 152 USPQ 77 (CCPA 1967).

Appellants respectfully point out that a recent case on point is *In re Ngai*, 70 USPQ2d (Fed. Cir. 2004), which discusses an older case (but far more recent than the very old cases the Examiner cited in the second Office Action), namely *In re Gulack*, 217 USPQ 401 (Fed. Cir. 1983), which Appellants already discussed in their December 20, 2004 Response to the first Office Action.

More particularly, *In re Ngai* stands for the proposition that addition of *new* printed matter to a *known* product (the printed matter was new instructions to a known kit containing buffer for RNA) does not make that product patentable. The Court in *In re Ngai* went on to discuss how that situation distinguished over *In re Gulack*, where the digits imprinted on a band interrelated with the band so that the printed matter would not achieve its purposed without the band and therefore the product was patentable.

Appellants respectfully summarize the following, as discussed in their December 20, 2004 Response to the first Office Action.

In the first Office Action, the Examiner cited *In re Gulack*, 217 USPQ 401 (Fed. Cir. 1983), for the proposition that claimed printed matter should be given patentable weight because there was a functional relationship between the printed matter and the substrate. The Examiner then concluded that in the present case, there is no functional relationship between the substrate (applicants' cards) and the matter in question (applicants' legends and pictures) printed on the substrate. Specifically, the Examiner concluded:

The Applicant's [*sic*, Applicants'] cards and Dwyer's cards provide a substrate or support for the legends and pictures such that the legends and pictures can be displayed for the convenience of the players. Therefore, the Applicant's [*sic*, Applicants'] legends and pictures recited in claims 3 – 7 and 11 do not patentably distinguish from Dwyer's legends and pictures proposed by the Examiner.

Appellants again respectfully point out that the Examiner's conclusion in the first Office Action [cards provide a substrate or support for the legends and pictures such that the legends and pictures can be displayed for the convenience of the players] *is true of all card games, and if that were a reason for lack of patentability, then no card game would ever be patentable.*

Clearly, the Examiner's reason for lack of patentability is erroneous, as the Examiner has misinterpreted when a mere arrangement of printed matter is not patentable subject matter.

*As is clear from the court cases, differences between the claimed invention and the prior art cited against it cannot be ignored merely because those differences reside in the content of printed matter.*

Appellants respectfully submit that the Examiner is ignoring the differences between appellants' claimed playing cards and the playing cards of cited Dwyer merely because those differences reside in the content of printed matter.

Appellants have clearly explained the differences between their playing cards and the playing cards in Dwyer, and the Board is respectfully referred to the discussion above.

Appellants are not simply adding new printed matter instructions to the same known playing cards of Dwyer, and thus, appellants' facts distinguish from *In re Ngai* where new printed matter instructions were added to the same known buffer kit containing buffer for RNA.

Accordingly, the Board is respectfully requested to instruct the Examiner to withdraw the rejection under §101 that claims 1 – 10 are directed to a mere arrangement of printed matter, printed matter being non-statutory.

***III. Discussion of rejection of claim 11 under 35 USC §102(b) as being anticipated by U.S. Patent No. 5,417,432 to Dwyer.***

In both the first Office Action and the second Office Action, the Examiner made the same anticipation rejection under 35 USC §102(b) in view of Dwyer.

Appellants once again respectfully point out, as the Examiner should be aware, for a reference to be a reference under any paragraph of §102, that reference, *by itself*, must teach each and every element of the claimed invention. As appellants already explained in their December 20, 2004 Response to the first Office Action, that is not achieved by Dwyer by itself.

With respect to the arguments in the December 20, 2004 Response, the Examiner now takes the position in the second Office Action that:

Applicant's [*sic*, Applicants'] arguments are based on how the printed matter on the two suits is used to play a game. This relates to game rules or method of play.

Appellants respectfully point out that this statement by the Examiner is clearly erroneous and that the December 20, 2004 arguments vis-à-vis claim 11 specifically relate to the *product playing cards themselves, not the method of playing the game*.

Appellants respectfully summarize the following, as discussed in the December 20, 2004 Response to the first Office Action.

Appellants' independent product claim 11 requires that the playing cards comprise two DISTINCT suits where the first suit comprises threat cards and the second suit comprises tool cards having at least one "WILD" tool card, and requires that the number of tool cards is the same as the number of threat cards or that the number of tool cards is twice the number of threat cards.

In the first Office Action, the Examiner noted that Dwyer discloses playing cards having a first suit of 26 cards each with a letter of the alphabet “A” to “Z” and a picture, and a second suit of 26 cards each with a letter of the alphabet “A” to “Z” and a picture, but varying in color of border design.

This is correct.

In other words for Dwyer, the letter/picture of each of the 26 cards in the first suit is the same letter/picture of each of the 26 cards in the second suit. Thus, the two suits are the SAME, with the ONLY difference between the two suits being the color of the border design.

Also in the first Office Action, in connection with the Examiner’s rejection of the claim under 35 USC §102(b) as being anticipated by Dwyer, the Examiner noted that there are differences between the present invention and Dwyer, and those differences reside in the meaning and information conveyed by the printed matter. Thus, the Examiner, *by his own admission*, has acknowledged that there are differences between appellants’ playing cards and the playing cards disclosed in Dwyer. Then, the Examiner cited *Ex parte Breslow*, 192 USPQ 431 (Board of Appeals, 1975), for the proposition that the differences that reside in the meaning and information conveyed by printed matter on the cards are considered unpatentable differences.

Now in the second Office Action, the Examiner asserted that since the presently claimed playing cards are not novel in view of Dwyer that therefore *Ex parte Breslow* applies, and thus, the present product claims are not patentable, and again the Examiner cited *Ex parte Breslow*.

Appellants again respectfully submit that the Examiner has misinterpreted *Ex parte Breslow*.

Rather, *Ex parte Breslow* involved a claimed combination card game/board game, where the prior art Mitchell patent also involved a combination card game/board game.

The Breslow claimed game had a board divided into stations indicative of jobs which require certain qualifications and pay certain salaries, and cards divided into job experience cards, job availability cards, and salary cards. Information on the cards was utilized to follow the game rules. A chance device was operated to determine the number of stations that a player moved the playing piece and the station landed on determined from which set of cards the player



must draw. The directions printed on the card drawn determined what the player must do for the game to progress.

The prior art Mitchell game had a board, a chance device and sets of cards. The board was divided into stations and the chance device determined the station to which a player's playing piece was advanced. The station landed on (by color code) determined from which deck of cards the player would draw. The instructions on the card determined what the player must do for the game to progress.

Thus, the Board in *Ex parte Breslow* held that:

the relationship between the game board and cards of Mitchell is identical to that of appellant's game board and card and ... the printed matter on the game board and cards of appellant's game is insufficient to define any new functional relationship over that shown by Mitchell.... There is as much correlation between the sets or deck of cards and the stations of Mitchell as there are in appellant's board game. ... Any differences relate to the information or instructions conveyed by the printed matter and not in any structure per se.

In short, the function between the cards and the board in the Mitchell game was the same as the function between the cards and the board in the Breslow claimed game.

In contrast, appellants' playing cards have significant structural differences in that the cards have *two different suits*, where the first suit has the structure of threat cards and the second suit has the structure of tool cards. In contrast in Dwyer, there are two suits, but the cards of the first suit are the same as the cards of the second suit, with only a minor variance in border color. Thus, the function between applicants' first suit and second suit is different from the function between Dwyer's first suit and second suit.

If appellants' two suits were the same cards, then appellants' function between the two suits would not exist, since both suits would have the same cards, instead of the first suit having threat cards and the second suit having tool cards. On the other hand, having the two suits be the same cards is the function of Dwyer, namely to teach children the alphabet by the children matching two cards with letter "A", two cards with letter "B", and so on.

Based on the Examiner's misinterpretation of *Ex parte Breslow*, the Dwyer playing cards would not be patentable either since there are certainly older games with playing cards, and the first such playing cards would anticipate all later developed playing cards.

Hence, Dwyer cannot be a reference under §102(b) since Dwyer is not a reference that *by itself* teaches each and every element of the presently claimed invention.

Accordingly, the Board is respectfully requested to instruct the Examiner to withdraw the rejection under §102(b) for anticipation of claim 11 with regard to U.S. Patent No. 5,417,431 to Dwyer.

***IV. Discussion of rejection of claim 11 under 35 USC §101 as being non-statutory subject matter.***

In the second Office Action, the Examiner made a new rejection that claim 11 is non-statutory subject matter under 35 USC §101 as being a mere arrangement of printed matter.

The Examiner stated that the playing cards as claimed are a mere arrangement of printed matter that is not functionally related to the substrate and therefore do not distinguish from the prior art. The Examiner cited three very old court cases from 1969, 1955, and 1967, namely:

*In re Miller*, 164 USPQ 46 (CCPA 1969),

*Ex parte Gwinn*, 112 USPQ 439 (Bd. App. 1955), and

*In re Jones*, 152 USPQ 77 (CCPA 1967).

Appellants respectfully point out that a recent case on point is *In re Ngai*, 70 USPQ2d (Fed. Cir. 2004), which discusses an older case (but far more recent than the very old cases the Examiner cited in the second Office Action), namely *In re Gulack*, 217 USPQ 401 (Fed. Cir. 1983), which Appellants already discussed in their December 20, 2004 Response to the first Office Action.

More particularly, *In re Ngai* stands for the proposition that addition of *new* printed matter to a *known* product (the printed matter was new instructions to a known kit containing buffer for RNA) does not make that product patentable. The Court in *In re Ngai* went on to discuss how that situation distinguished over *In re Gulack*, where the digits imprinted on a band

interrelated with the band so that the printed matter would not achieve its purposed without the band and therefore the product was patentable.

Appellants respectfully summarize the following, as discussed in the December 20, 2004 Response to the first Office Action.

In the first Office Action, the Examiner cited *In re Gulack*, 217 USPQ 401 (Fed. Cir. 1983), for the proposition that claimed printed matter should be given patentable weight because there was a functional relationship between the printed matter and the substrate. The Examiner then concluded that in the present case, there is no functional relationship between the substrate (applicants' cards) and the matter in question (applicants' legends and pictures) printed on the substrate. Specifically, the Examiner concluded:

The Applicant's [*sic*, Applicants'] cards and Dwyer's cards provide a substrate or support for the legends and pictures such that the legends and pictures can be displayed for the convenience of the players. Therefore, the Applicant's [*sic*, Applicants'] legends and pictures recited in claims 3 – 7 and 11 do not patentably distinguish from Dwyer's legends and pictures proposed by the Examiner.

Appellants again respectfully point out that the Examiner's conclusion in the first Office Action [cards provide a substrate or support for the legends and pictures such that the legends and pictures can be displayed for the convenience of the players] *is true of all card games, and if that were a reason for lack of patentability, then no card game would ever be patentable.*

Clearly, the Examiner's reason for lack of patentability is erroneous, as the Examiner has misinterpreted when a mere arrangement of printed matter is not patentable subject matter.

*As is clear from the court cases, differences between the claimed invention and the prior art cited against it cannot be ignored merely because those differences reside in the content of printed matter.*

Appellants respectfully submit that the Examiner is ignoring the differences between appellants' claimed playing cards and the playing cards of cited Dwyer merely because those differences reside in the content of printed matter.

Appellants have clearly explained the differences between their playing cards and the playing cards in Dwyer, and the Board is respectfully referred to the discussion above.

Appellants are not simply adding new printed matter instructions to the same known playing cards of Dwyer, and thus, appellants' facts distinguish from *In re Ngai* where new printed matter instructions were added to the same known buffer kit containing buffer for RNA.

Accordingly, the Board is respectfully requested to instruct the Examiner to withdraw the rejection under §101 that claim 11 is directed to a mere arrangement of printed matter, printed matter being non-statutory.

***V. Discussion of rejection of claims 12 - 26 under 35 USC §103(a) as being obvious over U.S. Patent No. 5,547,199 to Calhoun, in view of U.S. Patent No. 4,637,799 to Bouchal.***

In both the first Office Action and the second Office Action, the Examiner made the same rejection under 35 USC §103(a) of obviousness over Calhoun in view of Bouchal.

The Examiner noted in the first Office Action that Calhoun discloses a method of playing a card game where the cards have a first suit of sentence cards and a second suit of picture cards, the two suits being separated. A player selects a sentence card and at least one picture card, and then must explain how the picture on the picture card relates to the sentence on the sentence card.

Appellants once more respectfully point out, as discussed in their December 20, 2004 Response to the first Office Action, that the Examiner ignored that Calhoun requires that the sentence on the sentence card and the picture on the picture card are *already predetermined to inherently relate to each other*, and thus, a player selects a sentence card and at least one picture card, and then must explain that *predetermined* relationship of the picture on the picture card to the sentence on the sentence card.

The Examiner now stated in the second Office Action that "This is beside the point" that the Calhoun sentence cards and picture cards are predetermined to inherently relate to each other.

**Appellants respectfully point out that this is exactly the point. It is impermissible in a §103(a) rejection for the Examiner to ignore certain teachings of a reference, and instead pick and choose only what the Examiner likes from a reference. As the Examiner should be well aware, such ignoring of teachings of a reference amounts to an impermissible hindsight argument.**

The Examiner also noted in both the first Office Action and the second Office Action that Bouchal '799 discloses a card game where a player observes the legends and pictures on displayed cards, and uses them to tell a story.

In contrast, appellants once more respectfully point out, as discussed in their December 20, 2004 Response to the first Office Action, appellants' independent method claim 12, and thus due to incorporation by reference, all of the dependent claims which depend back to independent claim 12, require two DISTINCT suits where both are picture cards, i.e., the first suit comprises threat cards and the second suit comprises tool cards. There are no sentence cards. The player takes a threat card and a tool card, and the player makes up the sentences, i.e., tells a story, for the relationship of the two cards, and scores from 0 points to a selected number of points for the story. The play continues.

With appellants' method, the player's story how the card of the first suit (threat card) relates to the card of the second suit (tool card) is solely devised by the player, and not inherently predetermined as in Calhoun.

Furthermore, with appellants' method, there is no arranging of a plurality of picture cards into a matrix, as is done in the card game in Bouchal '799.

Appellants once again respectfully point out the Examiner ignored that Bouchal '799 requires that the player arranges a plurality of picture cards in a matrix array that is a logical sequence so that the player can tell a story based on what the arrangement means.

The Examiner now stated in the second Office Action that he "cited Bouchel 799' [*sic*, Bouchal '799] because it teaches that it is known in card games for players to observe the legends and pictures on displayed cards, and use the legends and pictures to tell a story."

**As noted above, it is impermissible in a §103(a) rejection for the Examiner to ignore certain teachings of a reference, and instead pick and choose only what the Examiner likes from a reference. As the Examiner should be well aware, such ignoring of teachings of a reference amounts to an impermissible hindsight argument.**

Also, in the second Office Action, the Examiner stated that "In response to applicant's [*sic*, applicants'] arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references."

Appellants respectfully point out that this is an incorrect assertion by the Examiner, and the Examiner has completely ignored appellants' arguments about the combination of Calhoun and Bouchal '799 set out in appellants' December 20, 2004 Response to the first Office Action.

These arguments about the combination of Calhoun and Bouchal '799, as set out in appellants' December 20, 2004 Response, are reiterated verbatim here:

If Calhoun and Bouchal '799 were combined, then the resultant would be a matrix of cards with sentences such that the matrix of cards tells its own story. All the player would do is read the story from the matrix of cards, and there would be no need for creativity on the part of the player. This is a teaching away from applicants' claimed method. Furthermore, applicants respectfully point out that it is well known law that it is improper to ignore certain teachings of the references, as the references must be considered as a whole with respect to the claimed invention as a whole.

Thus, Calhoun and Bouchal, either alone or in any combination whatsoever, do not teach or suggest each and every element of the claimed invention, as claimed in claim 12. Accordingly, the Board is respectfully requested to instruct the Examiner withdraw the rejection under §103(a) for obviousness of claim 12, with regard to U.S. Patent No. 5,547,199 to Calhoun, in view of U.S. Patent No. 4,637,799 to Bouchal.

For the following additional reasons, each of dependent claims 13 – 26, each of which depends back to independent claim 12, further distinguishes with respect to obviousness over Calhoun and Bouchal, either alone or in any combination whatsoever. As compared to independent claim 12,

**dependent claim 13** further requires that the story comprises a story of defending against, coping with, or escaping from the threat depicted on the threat card selected by employing the tool depicted on the tool card selected;

**dependent claim 14** further requires that scoring zero points comprises all players agreeing not to keep points during play;

**dependent claim 15** further requires that the second suit has the same number of cards as the first suit has or the second suit has twice the number of cards as the first suit has;

**dependent claim 16** further requires that the first suit has 26 threat cards and the second suit has 26 tool cards or 52 tool cards;

**dependent claim 17** further requires that the first suit has at least one threat card chosen from a card containing on its face a legend reading “DEADLY INFECTION”, a card containing on its face a legend reading “ANACONDA”, a card containing on its face a legend reading “TRAPPED IN AN ELEVATOR”, a card containing on its face a legend reading “A POOL OF QUICKSAND”, a card containing on its face a legend reading “CHARGING RHINO”, a card containing on its face a legend reading “MAD AND HUNGRY OCTOPUS”, a card containing on its face a legend reading “HUNGRY CROCODILE”, a card containing on its face a legend reading “A FLOOD”, or a card containing on its face a legend reading “HIT BY LIGHTNING”;

**dependent claim 18** further requires that the first suit has at least one threat card chosen from a card containing on its face a legend reading “DEADLY INFECTION” and a picture of a person having an infected arm, a card containing on its face a legend reading “ANACONDA” and a picture of a snake, a card containing on its face a legend reading “TRAPPED IN AN ELEVATOR” and a picture of an elevator with a person trapped inside, a card containing on its face a legend reading “A POOL OF QUICKSAND” and a picture of a person with the person’s lower half inside of a pool of quicksand, a card containing on its face a

legend reading “CHARGING RHINO” and a picture of a rhinoceros, a card containing on its face a legend reading “MAD AND HUNGRY OCTOPUS” and a picture of an octopus, a card containing on its face a legend reading “HUNGRY CROCODILE” and a picture of a crocodile, a card containing on its face a legend reading “A FLOOD” and a picture of flood water approaching a house, or a card containing on its face a legend reading “HIT BY LIGHTNING” and a picture of a rain storm with a lightning bolt striking a person standing on the ground;

**dependent claim 19** further requires that the second suit has at least one tool card chosen from a card containing on its face a legend reading “A PARACHUTE”, a card containing on its face a legend reading “A WELDING TOOL”, a card containing on its face a legend reading “A HOSE”, a card containing on its face a legend reading “A LIFE VEST”, a card containing on its face a legend reading “A MIRROR”, a card containing on its face a legend reading “A GUN”, a card containing on its face a legend reading “A NEEDLE AND THREAD”, a card containing on its face a legend reading “A CELL PHONE”, a card containing on its face a legend reading “A MAGNIFYING GLASS”, a card containing on its face a legend reading “A ROPE”, a card containing on its face a legend reading “A POT OF HONEY”, a card containing on its face a legend reading “A FIRE EXTINGUISHER”, or a card containing on its face a legend reading “A HAM SANDWICH”;

**dependent claim 20** further requires the second suit has at least one tool card chosen from a card containing on its face a legend reading “A PARACHUTE” and a picture of a parachute, a card containing on its face a legend reading “A



WELDING TOOL” and a picture of a welding tool, a card containing on its face a legend reading “A HOSE” and a picture of a hose, a card containing on its face a legend reading “A LIFE VEST” and a picture of a life vest, a card containing on its face a legend reading “A MIRROR” and a picture of a mirror, a card containing on its face a legend reading “A GUN” and a picture of a gun, a card containing on its face a legend reading “A NEEDLE AND THREAD” and a picture of a needle and a spool of thread, a card containing on its face a legend reading “A CELL PHONE” and a picture of a cell phone, a card containing on its face a legend reading “A MAGNIFYING GLASS” and a picture of a magnifying glass, a card containing on its face a legend reading “A ROPE” and a picture of a rope, a card containing on its face a legend reading “A POT OF HONEY” and a picture of a pot of honey, a card containing on its face a legend reading “A FIRE EXTINGUISHER” and a picture of a fire extinguisher, or a card containing on its face a legend reading “A HAM SANDWICH” and a picture of a ham sandwich;

**dependent claim 21** further requires that the second suit has at least one tool card containing on its face a legend reading “WILD”;

**dependent claim 22** further requires that the second suit has at least one tool card containing on its face a legend reading “WILD” and a picture of a joker’s head;

**dependent claim 23** further requires that each selected hand of cards comprises one threat card and one tool card;

**dependent claim 24** further requires that each selected hand of cards comprises one threat card and two tool cards;

**dependent claim 25** further requires that telling a story is accomplished within a

selected amount of time;

**dependent claim 26** further requires that step (a) further includes providing a time keeper.

None of these further features from claims 13 – 26 is taught or suggested by Calhoun and Bouchal, either alone or in any combination whatsoever.

Thus, Calhoun and Bouchal, either alone or in any combination whatsoever, do not teach or suggest each and every element of the claimed invention, as claimed in claims 13 - 26. Accordingly, the Board is respectfully requested to instruct the Examiner withdraw the rejection under §103(a) for obviousness of claims 13 - 26, with regard to U.S. Patent No. 5,547,199 to Calhoun, in view of U.S. Patent No. 4,637,799 to Bouchal.

***VI. Discussion of rejection of claim 27 under 35 USC §103(a) as being obvious over U.S. Patent No. 5,547,199 to Calhoun, in view of U.S. Patent No. 4,637,799 to Bouchal.***

In both the first Office Action and the second Office Action, the Examiner made the same rejection under 35 USC §103(a) of obviousness over Calhoun in view of Bouchal.

The Examiner noted in the first Office Action that Calhoun discloses a method of playing a card game where the cards have a first suit of sentence cards and a second suit of picture cards, the two suits being separated. A player selects a sentence card and at least one picture card, and then must explain how the picture on the picture card relates to the sentence on the sentence card.

Appellants once more respectfully point out, as discussed in their December 20, 2004 Response to the first Office Action, that the Examiner ignored that Calhoun requires that the sentence on the sentence card and the picture on the picture card are *already predetermined to inherently relate to each other*, and thus, a player selects a sentence card and at least one picture card, and then must explain that *predetermined* relationship of the picture on the picture card to the sentence on the sentence card.

The Examiner now stated in the second Office Action that “This is beside the point” that the Calhoun sentence cards and picture cards are predetermined to inherently relate to each other.

**Appellants respectfully point out that this is exactly the point. It is impermissible in a §103(a) rejection for the Examiner to ignore certain teachings of a reference, and instead pick and choose only what the Examiner likes from a reference. As the Examiner should be well aware, such ignoring of teachings of a reference amounts to an impermissible hindsight argument.**

The Examiner also noted in both the first Office Action and the second Office Action that Bouchal '799 discloses a card game where a player observes the legends and pictures on displayed cards, and uses them to tell a story.

In contrast, appellants once more respectfully point out, as discussed in their December 20, 2004 Response to the first Office Action, appellants' independent method claim 27 requires two DISTINCT suits where both are picture cards, i.e., the first suit comprises threat cards and the second suit comprises tool cards. There are no sentence cards. The player takes a threat card and a tool card, and the player makes up the sentences, i.e., tells a story, for the relationship of the two cards. Another player or players then tells another made up story based on the same cards. The player with the best of the stories scores from 0 points to a selected number of points. The play continues.

With appellants' method, the player's story how the card of the first suit (threat card) relates to the card of the second suit (tool card) is solely devised by the player, and not inherently predetermined as in Calhoun.

Then with appellants' method, another player makes up another story based on the same cards, whereas with the Calhoun cards, another player would be telling essentially the same story.

Furthermore, with appellants' method, there is no arranging of a plurality of picture cards into a matrix, as is done in the card game in Bouchal '799.

Appellants once again respectfully point out the Examiner ignored that Bouchal '799 requires that the player arranges a plurality of picture cards in a matrix array that is a logical sequence so that the player can tell a story based on what the arrangement means.

The Examiner now stated in the second Office Action that he "cited Bouchel 799' [*sic*, Bouchal '799] because it teaches that it is know in card games for players to observe the legends and pictures on displayed cards, and use the legends and pictures to tell a story."

**As noted above, it is impermissible in a §103(a) rejection for the Examiner to ignore certain teachings of a reference, and instead pick and choose only what the Examiner likes from a reference. As the Examiner should be well aware, such ignoring of teachings of a reference amounts to an impermissible hindsight argument.**

Also, in the second Office Action, the Examiner stated that “In response to applicant’s [*sic*, applicants’] arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references.”

Appellants respectfully point out that this is an incorrect assertion by the Examiner, and the Examiner has completely ignored appellants’ arguments about the combination of Calhoun and Bouchal ‘799 set out in appellants’ December 20, 2004 Response to the first Office Action.

These arguments about the combination of Calhoun and Bouchal ‘799, as set out in appellants’ December 20, 2004 Response, are reiterated verbatim here:

If Calhoun and Bouchal ‘799 were combined, then the resultant would be a matrix of cards with sentences such that the matrix of cards tells its own story. All the player would do is read the story from the matrix of cards, and there would be no need for creativity on the part of the player. This is a teaching away from applicants’ claimed method. Furthermore, applicants respectfully point out that it well known law that it is improper to ignore certain teachings of the references, as the references must be considered as a whole with respect to the claimed invention as a whole.

None of these features is taught or suggested by Calhoun and Bouchal, either alone or in any combination whatsoever. Thus, Calhoun and Bouchal, either alone or in any combination whatsoever, do not teach or suggest each and every element of the claimed invention, as claimed in claim 27. Accordingly, the Board is respectfully requested to instruct the Examiner withdraw the rejection under §103(a) for obviousness of claim 27, with regard to U.S. Patent No. 5,547,199 to Calhoun, in view of U.S. Patent No. 4,637,799 to Bouchal.

## CONCLUSIONS

Appellants respectfully submit that in view of the above comments, all claims are allowable, and the Board is respectfully requested to direct the Examiner to withdraw the various rejections under 35 USC §101, 35 USC §102(b), and 35 USC §103(a).

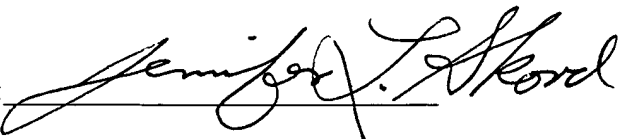
Accordingly, appellants respectfully submit that the case is in condition for allowance and early allowance is earnestly solicited, and the Board is respectfully requested to direct the Examiner to allow all claims and issue a Notice of Allowance for the present application.

## DEPOSIT ACCOUNT

A check in the amount of \$250.00 (small entity) was enclosed with the Appeal Brief filed August 11, 2005, and thus, the fee has been paid. Hence, it is believed that no fee is due for the instant amended Appeal Brief, but nevertheless, the Commissioner is authorized to charge any deficiencies of payment associated with this Communication, or to credit any overpayment, to **Deposit Account No. 13-4365**.

Date: November 14, 2005

Respectfully submitted,

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Enclosures:  
Appendix (of claims 1 – 27 on Appeal)

## APPENDIX OF CLAIMS ON APPEAL

1. Playing cards comprising a deck divided into a first suit and a second suit, wherein the first suit comprises threat cards, and the second suit comprises tool cards.

2. The playing cards in accordance with claim 1, wherein the second suit has the same number of cards as the first suit has or the second suit has twice the number of cards as the first suit has.

3. The playing cards in accordance with claim 2, wherein the first suit has 26 threat cards and the second suit has 26 tool cards or 52 tool cards.

4. The playing cards in accordance with claim 1, wherein the first suit has at least one threat card chosen from a card containing on its face a legend reading “DEADLY INFECTION”, a card containing on its face a legend reading “ANACONDA”, a card containing on its face a legend reading “TRAPPED IN AN ELEVATOR”, a card containing on its face a legend reading “A POOL OF QUICKSAND”, a card containing on its face a legend reading “CHARGING RHINO”, a card containing on its face a legend reading “MAD AND HUNGRY OCTOPUS”, a card containing on its face a legend reading “HUNGRY CROCODILE”, a card containing on its face a legend reading “A FLOOD”, or a card containing on its face a legend reading “HIT BY LIGHTNING”.

5. The playing cards in accordance with claim 1, wherein the first suit has at least one threat card chosen from a card containing on its face a legend reading “DEADLY INFECTION” and a picture of a person having an infected arm, a card containing on its face a legend reading

“ANACONDA” and a picture of a snake, a card containing on its face a legend reading “TRAPPED IN AN ELEVATOR” and a picture of an elevator with a person trapped inside, a card containing on its face a legend reading “A POOL OF QUICKSAND” and a picture of a person with the person’s lower half inside of a pool of quicksand, a card containing on its face a legend reading “CHARGING RHINO” and a picture of a rhinoceros, a card containing on its face a legend reading “MAD AND HUNGRY OCTOPUS” and a picture of an octopus, a card containing on its face a legend reading “HUNGRY CROCODILE” and a picture of a crocodile, a card containing on its face a legend reading “A FLOOD” and a picture of flood water approaching a house, or a card containing on its face a legend reading “HIT BY LIGHTNING” and a picture of a rain storm with a lightning bolt striking a person standing on the ground.

6. The playing cards in accordance with claim 1, wherein the second suit has at least one tool card chosen from a card containing on its face a legend reading “A PARACHUTE”, a card containing on its face a legend reading “A WELDING TOOL”, a card containing on its face a legend reading “A HOSE”, a card containing on its face a legend reading “A LIFE VEST”, a card containing on its face a legend reading “A MIRROR”, a card containing on its face a legend reading “A GUN”, a card containing on its face a legend reading “A NEEDLE AND THREAD”, a card containing on its face a legend reading “A CELL PHONE”, a card containing on its face a legend reading “A MAGNIFYING GLASS”, a card containing on its face a legend reading “A ROPE”, a card containing on its face a legend reading “A POT OF HONEY”, a card containing on its face a legend reading “A FIRE EXTINGUISHER”, or a card containing on its face a legend reading “A HAM SANDWICH”.

7. The playing cards in accordance with claim 1, wherein the second suit has at least one tool card chosen from a card containing on its face a legend reading “A PARACHUTE” and a

picture of a parachute, a card containing on its face a legend reading “A WELDING TOOL” and a picture of a welding tool, a card containing on its face a legend reading “A HOSE” and a picture of a hose, a card containing on its face a legend reading “A LIFE VEST” and a picture of a life vest, a card containing on its face a legend reading “A MIRROR” and a picture of a mirror, a card containing on its face a legend reading “A GUN” and a picture of a gun, a card containing on its face a legend reading “A NEEDLE AND THREAD” and a picture of a needle and a spool of thread, a card containing on its face a legend reading “A CELL PHONE” and a picture of a cell phone, a card containing on its face a legend reading “A MAGNIFYING GLASS” and a picture of a magnifying glass, a card containing on its face a legend reading “A ROPE” and a picture of a rope, a card containing on its face a legend reading “A POT OF HONEY” and a picture of a pot of honey, a card containing on its face a legend reading “A FIRE EXTINGUISHER” and a picture of a fire extinguisher, or a card containing on its face a legend reading “A HAM SANDWICH” and a picture of a ham sandwich.

8. The playing cards in accordance with claim 1, wherein the second suit has at least one tool card containing on its face a legend reading “WILD”.

9. The playing cards in accordance with claim 8, wherein the second suit has at least one tool card containing on its face a legend reading “WILD” and a picture of a joker’s head.

10. The playing cards in accordance with claim 1, wherein the deck of cards is in combination with a time keeper.

11. Playing cards comprising a deck divided into a first suit and a second suit, wherein the first suit comprises threat cards, and the second suit comprises tool cards, wherein the second suit has the same number of cards as the first suit has or the second suit has twice the number of cards as the first suit has, and wherein the second suit has at least one tool card containing on its



face a legend reading “WILD”.

12. A method of playing a card game comprising:

- (a) providing playing cards comprising a deck having a first suit and a second suit, wherein the first suit comprises threat cards, and the second suit comprises tool cards, and wherein the first suit and the second suit are separated from each other into a first group and a second group;
- (b) a first player selecting a threat card from the first group and a tool card from the second group, and telling a story based on the selected hand of cards, and scoring from zero points to a selected number of points for the story;
- (c) continuing play as in step (b) with at least one other player; and
- (d) continuing with play among players until all cards have been selected from the two groups or until an agreed upon time has been reached.

13. The method in accordance with claim 12, wherein the story comprises a story of defending against, coping with, or escaping from the threat depicted on the threat card selected by employing the tool depicted on the tool card selected.

14. The method in accordance with claim 12, wherein scoring zero points comprises all players agreeing not to keep points during play.

15. The method in accordance with claim 12, wherein the second suit has the same number of cards as the first suit has or the second suit has twice the number of cards as the first suit has.

16. The method in accordance with claim 15, wherein the first suit has 26 threat cards and the second suit has 26 tool cards or 52 tool cards.

17. The method in accordance with claim 12, wherein the first suit has at least one threat card chosen from a card containing on its face a legend reading “DEADLY INFECTION”, a card containing on its face a legend reading “ANACONDA”, a card containing on its face a legend reading “TRAPPED IN AN ELEVATOR”, a card containing on its face a legend reading “A POOL OF QUICKSAND”, a card containing on its face a legend reading “CHARGING RHINO”, a card containing on its face a legend reading “MAD AND HUNGRY OCTOPUS”, a card containing on its face a legend reading “HUNGRY CROCODILE”, a card containing on its face a legend reading “A FLOOD”, or a card containing on its face a legend reading “HIT BY LIGHTNING”.

18. The method in accordance with claim 12, wherein the first suit has at least one threat card chosen from a card containing on its face a legend reading “DEADLY INFECTION” and a picture of a person having an infected arm, a card containing on its face a legend reading “ANACONDA” and a picture of a snake, a card containing on its face a legend reading “TRAPPED IN AN ELEVATOR” and a picture of an elevator with a person trapped inside, a card containing on its face a legend reading “A POOL OF QUICKSAND” and a picture of a person with the person’s lower half inside of a pool of quicksand, a card containing on its face a legend reading “CHARGING RHINO” and a picture of a rhinoceros, a card containing on its face a legend reading “MAD AND HUNGRY OCTOPUS” and a picture of an octopus, a card containing on its face a legend reading “HUNGRY CROCODILE” and a picture of a crocodile, a card containing on its face a legend reading “A FLOOD” and a picture of flood water approaching a house, or a card containing on its face a legend reading “HIT BY LIGHTNING” and a picture of a rain storm with a lightning bolt striking a person standing on the ground.

19. The method in accordance with claim 12, wherein the second suit has at least one

tool card chosen from a card containing on its face a legend reading “A PARACHUTE”, a card containing on its face a legend reading “A WELDING TOOL”, a card containing on its face a legend reading “A HOSE”, a card containing on its face a legend reading “A LIFE VEST”, a card containing on its face a legend reading “A MIRROR”, a card containing on its face a legend reading “A GUN”, a card containing on its face a legend reading “A NEEDLE AND THREAD”, a card containing on its face a legend reading “A CELL PHONE”, a card containing on its face a legend reading “A MAGNIFYING GLASS”, a card containing on its face a legend reading “A ROPE”, a card containing on its face a legend reading “A POT OF HONEY”, a card containing on its face a legend reading “A FIRE EXTINGUISHER”, or a card containing on its face a legend reading “A HAM SANDWICH”.

20. The method in accordance with claim 12, wherein the second suit has at least one tool card chosen from a card containing on its face a legend reading “A PARACHUTE” and a picture of a parachute, a card containing on its face a legend reading “A WELDING TOOL” and a picture of a welding tool, a card containing on its face a legend reading “A HOSE” and a picture of a hose, a card containing on its face a legend reading “A LIFE VEST” and a picture of a life vest, a card containing on its face a legend reading “A MIRROR” and a picture of a mirror, a card containing on its face a legend reading “A GUN” and a picture of a gun, a card containing on its face a legend reading “A NEEDLE AND THREAD” and a picture of a needle and a spool of thread, a card containing on its face a legend reading “A CELL PHONE” and a picture of a cell phone, a card containing on its face a legend reading “A MAGNIFYING GLASS” and a picture of a magnifying glass, a card containing on its face a legend reading “A ROPE” and a picture of a rope, a card containing on its face a legend reading “A POT OF HONEY” and a picture of a pot of honey, a card containing on its face a legend reading “A FIRE

EXTINGUISHER” and a picture of a fire extinguisher, or a card containing on its face a legend reading “A HAM SANDWICH” and a picture of a ham sandwich.

21. The method in accordance with claim 12, wherein the second suit has at least one tool card containing on its face a legend reading “WILD”.

22. The method in accordance with claim 21, wherein the second suit has at least one tool card containing on its face a legend reading “WILD” and a picture of a joker’s head.

23. The method in accordance with claim 12, wherein each selected hand of cards comprises one threat card and one tool card.

24. The method in accordance with claim 12, wherein each selected hand of cards comprises one threat card and two tool cards.

25. The method in accordance with claim 12, wherein telling a story is accomplished within a selected amount of time.

26. The method in accordance with claim 12, wherein step (a) further includes providing a time keeper.

27. A method of playing a card game comprising:

- (a) providing playing cards comprising a deck having a first suit and a second suit, wherein the first suit comprises threat cards, and the second suit comprises tool cards, and wherein the first suit and the second suit are separated from each other into a first group and a second group;
- (b) a first player selecting a threat card from the first group and a tool card from the second group, and telling a story based on the selected hand of cards;
- (c) another player or players having a chance to tell another story based on the same selected hand of cards;

- (d) the player with the best of the stories scoring from zero points to a selected number of points for the story told;
- (e) continuing with play by another player selecting cards and by storytelling and point scoring as in steps (c) and (d); and
- (f) continuing with play among players until all cards have been selected from the two groups or until an agreed upon time has been reached.